

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DERRICK BURTON,
Plaintiff,

v.

DETECTIVE DANIEL CRAIG, et al.
Defendants.

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CIVIL ACTION NO. 23-CV-5020

ORDER

AND NOW, this 2nd day of January, 2024, upon consideration of Plaintiff Derrick Burton's motion to proceed *in forma pauperis* (Doc. # 2), prisoner trust fund account statement (Doc. # 3), and *pro se* complaint (Doc. # 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Derrick Burton, #QP-2650, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The court directs the Superintendent of SCI Benner or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. Burton's inmate account; or (b) the average monthly balance in Mr. Burton's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent of SCI Benner or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this order to the court with a reference to the docket number for this case. In each succeeding month when the amount in Mr. Burton's inmate trust fund account exceeds \$10.00, the Superintendent of SCI Benner or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Mr. Burton's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this order to the Superintendent of SCI Benner.

4. The complaint is **DEEMED** filed.

5. For the reasons stated in the court's memorandum accompanying this order, Mr. Burton's claims against Springfield Township Police District are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Mr. Burton's claims against Detective Daniel Craig alleging racial profiling and harassment and an FCC violation are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

6. The Clerk of Court is **DIRECTED** to terminate Springfield Township Police District as a defendant.

7. The Clerk of Court is **DIRECTED** to send Mr. Burton a blank copy of the court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.

8. Mr. Burton is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state plausible claims against Detective Craig based on racial profiling and harassment and an FCC violation. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Mr. Burton's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 23-5020. **If Mr. Burton files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Mr. Burton's claims, including claims that the court has not yet dismissed if he seeks to proceed on those claims.** Claims that are not included in the amended complaint

will not be considered part of this case. When drafting his amended complaint, Mr. Burton should be mindful of the court's reasons for dismissing his claims as explained in the memorandum accompanying this order. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the court.

9. If Mr. Burton does not file an amended complaint the court will direct service of his initial complaint on defendant Detective Craig for a responsive pleading to Mr. Burton's Fourth Amendment and state law defamation claims **only**. Mr. Burton may also notify the court that he seeks to proceed on these claims only rather than file an amended complaint. If he files such a notice, Burton is reminded to include the case number for this case, 23-5020.

10. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Harvey Bartle III

J.